

Item #	Comment From	Comment	Analysis/ Recommendation
1.	William Woody (Consumer Direct AZ)	<p>We use the personal representative to bring in another set of eyes to ensure the care and the quality of care is received. It works very well especially in rural areas. Personal representative does not act as the paid caregiver. Supportive of the definition of Individual Representative.</p> <p>Please accept this correction to my public comment during today's hearing on Arizona's implementation of the Community First Choice Option. I am not in favor of the rule as written if the rule requires the Personal Representative (PR) to be present during the delivery of service. If this were to be the case then someone will have to compensate the PR for their time. I assume that increasing costs to ALTCS is not the goal.</p> <p>Additionally, in each of the other 9 states we provide Medicaid personal assistance in, requiring the PR to be present is considered an unnecessary, onerous, and impractical burden to the consumer, as it would require them finding not just a personal care worker but also a PR to present during the shift, thereby creating an unfair accessibility hurdle to those using the PR option.</p>	<p>The rule does not require the individual representative to be present during the delivery of care. The Administration has reconsidered the term “individual representative” and has limited its application to the Agency with Choice option.</p>

2.	Barbara Jones (parent)	<p>According to this law it will bring another level of bureaucracy, which was not the intent when we wrote the law. The parents who actively participate are affected. The reason the agencies were brought in was to remove the state from the equation. The agencies that came about were established to not cost the state more money. Now you are developing another layer that the parents must go through, and parents get short end of stick. Parents actively participate in their child's care but cannot be expected to do everything. I currently receive 80 hours a month for attendant care and habilitation. He requires more care than what I currently receive. The agency that is responsible/accountable to the state should be the one to develop the additional safeguards. This should be the agencies responsibility not the state.</p> <p>Who is in charge of this agency? What is the difference from Angels with Wings and this agency? Why have this different agency? Why is it necessary to have this agency and why do you need to come to us? What safeguards are there that are not being spelled out?</p> <ul style="list-style-type: none"> <li>-It should be the role of the agencies and/or the support coordinators to ensure the quality and provide safeguards to the provision of services.</li> <li>-Members are not getting all of the services they need. Additionally, family members (guardians) who are paid caregivers are only getting paid for a small portion of the services that are needed to support the family member and, therefore, saving the state money.</li> <li>-Individual Representative policy will require them to get someone (an "outsider") involved who doesn't understand the system, their child.</li> </ul> <p>How does it affect parents in the traditional model? Why are you saying that we can care for our child and not get paid for it?</p>	<p>The Agency with Choice model is a proposed new, member-directed option for ALTCS members living in their own home and receiving attendant care, personal care, homemaker or habilitation services. Member-directed options are not service, but rather pertain to the way in which services are delivered. They allow members an opportunity to have more control over how services are provided. Currently AHCCCS only has one member-directed option, Self-Directed Attendant Care (for individuals who are elderly or have physical disabilities) and the Independent Provider Network (for individuals with developmental disabilities). For both of these options, the member is the legal employer of the caregivers. AHCCCS is utilizing the Community First Choice Option (Section 1015 (k) of the Social Security Act) to provide an additional member-directed option. For members who may desire to direct their own care, but are not interested in being the legal employer of the caregiver, AHCCCS is proposing the Agency with Choice option. Under this option, the member and the agency enter into a co-employment relationship. The agency serves as the legal employer (hires, fires and provides required training for the caregiver). The member may assume one or more of the following employer-based responsibilities including recruiting, selecting, dismissing, determining duties, scheduling, specifying training to meet the unique needs of the member and supervising the paid caregivers on a day-to-day basis. Agencies contracted by the ALTCS Contractors will have the opportunity to offer this option to members. The Agency with Choice, member-directed option does not create a new service system or agency.</p> <p>The Individual Representative conflict of interest provision will be applied only to members choosing the Agency with Choice option. It was during the Agency with Choice, member-directed option development process that AHCCCS was enlightened about CMS' (Centers for Medicare and Medicaid Services) requirement for the conflict of interest provision (prohibition of Individual Representatives also serving paid caregivers). The conflict of interest provision does not prohibit non-legally responsible family members from being paid caregivers. The rulemaking does prohibit any paid caregiver, including a family member, from also acting as the individual's representative when receiving services through the Agency with Choice model.</p>
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3.	Ruth Chavez (Good Neighbor)	<p>Does this apply to both DD and HCBS?</p> <p>How was the individual representation incorporated by William Woody? We are having difficulty as an agency.</p> <p>What if there isn't a third person? Would we need to bring in a paid caregiver to be the representative?</p>	<p>The Administration has reconsidered the term "individual representative" and has limited its application to the Agency with Choice option. Yes</p> <p>Caregivers can be part of the service plan process; another individual would need to authorize the plan.</p> <p>It cannot be the same person providing the HCBS services to that individual that needs services authorized.</p>
4.	Carolyn Griffiths (Consumer Direct AZ)	Supportive of this model and the conflicts of interest policy.	
5.	Kim Simmons (DES/DDD)	Clarification needed for the Natural Support services definition.	Under the federal rule the natural support services are provided voluntarily, if the services are medically necessary they are provided by the contractor.
6.	Alisa Nelson (parent)	<p>-AHCCCS did not widely publicize that they were contemplating the conflict of interest policy nor did they widely publicize the opportunity to provide input.</p> <p>-It should be the role of the agencies and/or the support coordinators to ensure the quality and provide safeguards to the provision of services</p> <p>-Members are not getting all of the services they need. Additionally, family members (guardians) who are paid caregivers are only getting paid for a small portion of the services that are needed to support the family member and, therefore, saving the state money.</p> <p>-Individual Representative policy will require them to get someone (an "outsider") involved who doesn't understand the system, their child</p> <p>-Guardians are legally responsible to make sure the individuals needs are met</p>	<p>AHCCCS posted the notice of proposed rulemaking on August 2, 2012.</p> <p>AHCCCS sent correspondence to the Division of Developmental Disabilities on three occasions throughout the months of August and September 2012. The information was sent out via a list serve and posted on the website.</p> <p>AHCCCS has a new member-directed options webpage that provides information on the proposed Agency with Choice option including information on the federal rules, proposed state rules and how to provide public comment.</p>
7.	Unknown friend	We deserve the right to be seen as we are, and not in light the government sees. You cannot understand our position; we give up our life for our children who need our help.	The Administration has reconsidered the term "individual representative" and has limited its application to the Agency with Choice option.
8.	Unknown caller	Whether or not a parent/guardian/representative can get paid to be the ADH provider?	Attempted to call, no response received. In general a parent/guardian/representative can get paid if they are the paid caregiver..... The Administration has reconsidered the term "individual representative" and has limited its application to the Agency with Choice option.

9	Stuart Goldman (guardian)	<p>One commenter questioned if an individual’s representative assisting the individual to self-direct and manage their services can be paid as part of the service plan.</p> <p><b>Response:</b> Individuals acting as a representative are not paid to do so. Individuals acting as a representative also should not be a paid caregiver of an individual receiving CFC services and supports. This arrangement was prohibited in the section 1915(j) regulation, to avoid a conflict of interest.</p> <p>We are modifying the definition of “Individual’s representative” to continue this prohibition.</p> <p>It is not clear from the text if a guardian CAN waive the representative obligation. Can one co-guardian request in writing that the other assume the representative role for CFC while she serves as the provider? I am unsure about how single guardians can meet their obligation to the State and waive the obligation at the same time.</p> <p>It is unclear if an agency can act as the representative because of the conflict issue and it would also have to be uncompensated for the time.</p> <p>Since it is DDD and an agency that enter into a contract, can the agency be assumed to be the provider while a parent, etc. acts just as an employee of the agency?</p> <p>Why is the change being made? What problem is it addressing? What other solutions were considered?</p> <p>Is the DDD process legal, since guardians are appointed by the Superior Court of Arizona and they might not be able to wave their role without a court order?</p> <p>If the parent continues to provide the service, who can be the representative? What qualifications need to be met? Who approves?</p> <p>Does the representative need to sign the various DDD forms monthly forms confirming the services were received?</p> <p>If so, how can this be accomplished if the representative does not live with the client? Does this just become a rubber stamp?</p>	<p>The terms of each guardianship may vary depending on the court order granting guardianship. The AHCCCS Administration cannot provide guidance on individual cases or legal advice. We recommend you consult with an attorney.</p> <p>The Administration has reconsidered the term “individual representative” and has limited its application to the Agency with Choice option. The provider agency cannot also be an individual representative even if the provider agency does not charge for time associated with service planning.</p> <p>The parent who is an employee of the agency is a paid caregiver. The paid caregiver cannot also be an individual representative.</p> <p>This change is being made in response to federal regulations affecting the Medicaid program. As such, AHCCCS does not have flexibility to implement other solutions.</p> <p>In general, orders appointing guardians do not require the guardian to be a paid caregiver. This regulation does not require the guardian to relinquish their responsibilities as the guardian, although the guardian may have to forego acting as the paid caregiver.</p> <p>The Administration has reconsidered the term “individual representative” and has limited its application to the Agency with Choice option.</p>
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9.	Stuart Goldman (guardian) (cont.)	<p>At the ISP meetings, if the parent can not be the representative and has a friend, etc. act in that role, is it not likely the representative would parrot the parent's desire, so what is gained?</p> <p>If no representative can be assigned, how is the ISP meeting conducted? Does DDD represent the client?</p> <p>If so, is it legal for DDD to play two roles simultaneously?</p> <p>We understand that in the corresponding IEP (Individual Educational Plan) process situation, the court must appoint a surrogate parent to represent the client to prevent the state from playing both roles.</p> <p>Can a married couple who share care giving also share the responsible persons' role? Can the husband sign for the services performed by the wife and visa versa?</p> <p>If not, can one of the married couple act as the representative while the other is the provider? How often can the roles be reversed? Annually? Monthly? Weekly? Hourly? What documentation is required by DDD? Are there any circumstances under which the rule can be waved? If so, what are they?</p> <p>Has this change been vetted by DDD with the State legislature and Superior Court? It is likely that some parents/guardians/representatives may seek relief by appeals to DDD, Representatives of the State legislature, or suits to the Superior court so it would be good to be aware of rulings previously provided.</p>	<p>See Federal regulation 42 CFR 441. Individual's representative means a parent, family member, guardian, advocate, or other person authorized by the individual to serve as arepresentative in connection with the provision of CFC services and supports. This authorization should be in writing, when feasible, or by another method that clearly indicates the individual's free choice. An individual's representative may not also be a paid caregiver of an individual receiving services and supports under this subpart.</p> <p>See DDD for process and guidance of the various forms.</p> <p>The expectation is that the individual representative is acting on behalf of the member, not the member's parent.</p> <p>If a member is unable to represent themselves a guardian should be appointed. DDD cannot act as the client's individual representative because that would present a conflict of interest.</p> <p>These are federal regulations separate and apart from the state judicial process.</p>
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10.	Steven Goodrich (Assistant Attorney General)	<p>This message sets out questions regarding the proposed amendments to A.A.C. R9-28-101(B) (adding definitions of “Individual’s representative” and "natural support services"), and the proposed new A.A.C. R9-28-509 (adding the "Agency with Choice" service model for members of the Arizona Long Term Care System, or "ALTCS").</p> <p>A. Definition of "individual's representative"</p> <ol style="list-style-type: none"> <li>1. The "individual's representative" definition is set out in R9-28-101, which contains definitions that apply to Title 9, Chapter 28 of the Arizona Administrative Code. The "individual's representative" term is used in R9-28-509 (the new rule creating the "Agency with Choice" service model), but does not appear anywhere else in Chapter 28. Does AHCCCS intend that the last sentence of the definition of "individual's representative", which prohibits an "individual's representative" from working as a paid caregiver with respect to the individual, apply generally to all ALTCS members and all services and supports provided to the member?</li> <li>2. The proposed definition uses the words “individual” and “individual’s representative”, the same terminology used in the federal rule regarding the Community First Choice program(42 C.F.R. Section 441.505). However, “individual” is not defined in the AHCCCS rules; the term “member” as defined in A.R.S. 36-2931 and R9-28-901 is used in the AHCCCS rules. Wouldn’t it be clearer to use the words “member” and “member’s representative” instead of “individual” and “individual’s representative” in the proposed AHCCCS rule?</li> <li>3. The definition of “Co-employment relationship” set out in proposed R9-28-509(A) uses the phrase “ALTCS member or authorized representative”. Is the “authorized representative” different than the “Individual’s representative”?</li> <li>4. In proposed R9-28-509(C), the phrase “member or the member’s individual’s representative” is used in the first sentence; then, the phrase “member or authorized representative” is used in the second sentence. Wouldn’t it be clearer to use the phrase “member or member’s representative” throughout?</li> </ol>	<p>The Administration has reconsidered the term “individual representative” and has limited its application to the Agency with Choice option.</p> <p>Agreed, the definition of “individual representative” has been revised.</p> <p>Agreed, changed rule language.</p> <p>Agreed, changed rule language.</p>
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10.		<p>5. May a family member with rights and duties under law (such as the parent of a minor or guardian of an adult) with respect to an ALTCS member serve as a paid caregiver for that member, so long as some other person is designated as the "individual's representative"(some possible examples are set out in nos. 6 and 7 below)?</p> <p>6. If one parent is designated as the "individual's representative", may that parent's spouse be a paid caregiver, even though under community property law the parent serving as the individual's representative has rights to the consideration being paid to the caregiver/spouse?</p> <p>7. May the guardian of an ALTCS member serve as a paid caregiver if the guardian appoints some other person as the ALTCS member's individual's representative? Would such an arrangement effectively eliminate any conflict of interest, since presumably the guardian would retain the right to terminate the designation of the individual's representative?</p> <p><b>B. Agency with Choice" Service Model</b></p> <p>1. Proposed R9-28-509(B): will AHCCCS set out criteria for establishing, amending, and terminating the “co-employment relationship” contemplated by the Agency with Choice model?</p> <p>2. The proposed rule does not mention the federal “Community First Choice” program or the rules relating to that program(42 C.F.R. Part 441, Subpart K, 42 C.F.R. Sections 441.500-591). Will every ALTCS member electing “Agency with Choice” (and the agency working with that member) be subject to those rules?</p> <p><b>C. Definition of "Natural Support Services"</b></p> <p>1. The definition of “Natural Support Services” set out in proposed R9-28-101(B) states that such services "cannot supplant other covered services". Does that mean that in determining the appropriate amount of covered services to be provided by paid caregivers, the current level of natural support services should be disregarded?</p>	<p>Under 42 CFR 440.167 the parent of a minor child may not be a paid provider of personal care or attendant care services.</p> <p>Yes, the agency will provide further guidance to contractors through policy.</p> <p>Yes.</p> <p>At the outset of the service planning process, the appropriate level of medically necessary covered services should be determined. To the extent natural supports are voluntarily provided, the contractor’s responsibility for arranging paid caregivers is reduced.</p>
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11.	<b>Heidi Davis (Consumer Direct AZ)</b>	<p>Arizona Consumer Direct fully supports the Community First Choice option. Besides bringing needed revenue to the State of Arizona, it also increases the control and choice individuals have over services and the people who provide them.</p> <p>A current barrier for Arizona's Community First Choice plan being approved by the federal government is that legal guardians can be service providers. This problem is easily remedied by the use of a personal representatives chosen by the guardian. The personal representative adds an element of quality control by approving time sheets and overseeing that services are delivered according to the care/service plan. Representatives are used in the ten(10) states where Consumer Direct provides services. Some of the states are very rural which does not seem to impede locating a personal representative. Consumer Direct does not believe it necessary that the representative be present when services are delivered which is the current expectation in the SDAC rule. This expectation can make it difficult for guardians and individuals in need of services to find a personal representative. Consumer Direct is committed to assisting guardians locate representatives that can provide a needed level of oversight so that individuals in need of services can self - direct their own care.</p> <p>We commend Arizona Long Term Care and the citizens of Arizona for pursuing the Community First Choice option.</p>	<p>Thank you for your support.</p>
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12.	Sharon Gordon (parent)	<p>I understand the proposed rule affects HCBS services under ALTCS. Does it also affect residential options such as Adult Developmental Homes or adult family homes where an individual lives with a family who is reimbursed for care vs. a group home?</p> <p>I am opposed to this ruling as the guardian of a disabled adult. I was just in the process of redoing my will and guardianship. I had made arrangements for a friend to become the guardian of my adult disabled child in my will, with the understanding that the guardian would also provide care which was reimbursable under current ALTCS rules. Under the proposed rule no advocate, guardian, parent, relative, or representative can be reimbursed for care provided to the beneficiary. It is very unfair and can even be emotionally harmful to some individuals who are bonded to long term friends or providers whom we as parents consider to be the safest option to care for our children when we can no longer provide care ourselves, only to now be told that those persons can no longer be paid for such care if they care enough to become our child's guardian or representative.</p> <p>I understand the financial savings to Arizona's General Fund by doing this...well, I don't really understand it unless it is some type of governmental blackmail, but I do understand that it will save 3 million dollars. However it is an absolute insult to have this rule touted as an effort to expand the availability of member-directed service options for individuals enrolled in ALTCS. This does not benefit individuals enrolled in ALTCS who need guardians or representatives or advocates....in hurts them. I expect my comments to be heard as if I were personally appearing at the hearing. This is a "no" support vote. I wonder how many people at the hearing will be aware that the rule is already set to be implemented in January. How is that appropriate when the final hearing hasn't even been held?</p> <p>According to the social security act, attendant care CAN be provided by a family member. So why is that being disallowed under the new rule?</p> <p>(k)<a href="#">[355]</a> State Plan Option to Provide Home and Community based Attendant Services and Supports.—</p> <p>(A) Availability.—The State shall make available home and community-based attendant services and supports to eligible individuals, as needed, to assist in accomplishing activities of daily living, instrumental activities of daily living, and health-related tasks through hands-on assistance, supervision, or cueing—</p> <p>(III) provided by an individual who is qualified to provide such services, including family members (as defined by the Secretary).</p>	<p>Yes.</p> <p>The Agency with Choice option is being implemented to provide members with an additional option to direct and manage their own care.</p> <p>The Administration has reconsidered the term "individual representative" and has limited its application to the Agency with Choice option.</p>
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